



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1996

Ms. Cathy Cunningham
Senior Assistant City Attorney
P.O. Box 152288
Irving, Texas 75060

OR96-1781

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101173.

The City of Irving (the "city") received a request for "all statements and tape recordings of Mike Benton and all other persons interviewed in connection with the investigation" of a specific grievance and complaint. You contend that the requested documents are excepted from required public disclosure by sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the materials at issue.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you have demonstrated that a city employee has filed a complaint with the Equal Employment Opportunity Commission. We conclude, therefore, that the city

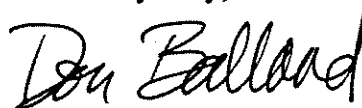
has shown that litigation is reasonably anticipated. Open Records Decision No. 336 (1982). After reviewing the submitted materials, we also conclude that the information at issue relates to that anticipated litigation. The city may, therefore, withhold the requested information.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because we are able to make a determination under section 552.103, we do not address your argument under 552.101 at this time. We note, however, that the requested information may be confidential and will be protected from disclosure even after litigation has concluded. *See* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

The requestor argues that her client has a special right of access to the requested information under section 552.023 of the Government Code. She contends that the investigation relates specifically to her client. Section 552.023 of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Thus, the special right of access provided by section 552.023 applies only when the requested information is about the person who is requesting the information. Section 552.103, however, protects a governmental body's litigation interests, not the privacy interests of individuals. Therefore, section 552.023 does not provide the requestor a special right of access in this case. *Cf.* Open Records Decision No. 587 (1991).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 101173

Enclosures: Submitted materials